

City of Bowie, Maryland
Docket No. CWA-03-2017-0083

CERTIFICATE OF SERVICE

I certify that on this date I caused to be sent by certified mail, return receipt requested, a copy of this "Consent Agreement and Final Order" to the following persons:

Elissa D. Levan
Funk & Bolton
Twelfth Floor
36 South Charles Street
Baltimore, Maryland 21201-3111

And the original and a copy delivered by hand to:

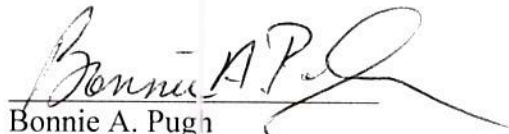
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Additionally, I caused to be sent by first class mail a copy of this "Consent Agreement and Final Order" to the following persons:

Sharon E. Talley-Chief
Enforcement Division
Compliance Program
Water Management Administration
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230

Raymond P. Bahr
Program Review Division Chief
Sediment, Stormwater, and Dam Safety Program
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, MD 21230-1708

Date: 3-6-17


Bonnie A. Pugh
Senior Assistant Regional Counsel

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

Proceeding to Assess Class I
Administrative Penalty Under
Section 309(g) of the Clean Water Act

Docket No. CWA-03-2017-0083

City of Bowie
15901 Excalibur Road
Bowie, Maryland 20716

Respondent

**CONSENT AGREEMENT AND
FINAL ORDER**

CONSENT AGREEMENT

I. STATUTORY AND REGULATORY BACKGROUND

1. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, *id.* § 1311(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated this authority to the Director, Water Protection Division ("Complainant").

2. This Consent Agreement is entered into by the Complainant and the City of Bowie ("Respondent"), pursuant to Section 309(g) of the CWA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

3. The Consolidated Rules, at 40 C.F.R. § 22.13(b) provide in pertinent part that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.13(b)(2) and (3). Pursuant thereto, this Consent Agreement and Final Order ("CAFO") simultaneously commence and conclude this administrative proceeding against Respondent.

4. Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of administrative penalties against any person who violates any

NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

5. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(A) and (B) of the Act, 33 U.S.C. § 1319(g)(2)(A) and (B), any person who has violated any NPDES permit condition or limitation is liable for an administrative penalty not to exceed \$20,628 per day for each day of violation, up to a total penalty amount of \$257,848 per proceeding.

6. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the Maryland Department of the Environment ("MDE") regarding this action, and will mail a copy of this document to the appropriate MDE official.

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

8. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the Act provides for the authorization of state programs to issue NPDES permits.

9. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.

10. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

11. The term "municipal separate storm sewer system" ("MS4") includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).

12. The term “small municipal separate storm sewer system” or “small MS4” means “all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water. . . .; [and] (ii) Not defined as ‘large’ or ‘medium’ municipal separate storm sewer systems.” 40 C.F.R. § 122.26(b)(16).

13. Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder. Pursuant to 40 C.F.R. § 122.26(a)(9)(i), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.

II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

14. The City of Bowie, Maryland (“Bowie” or “Respondent”) is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

15. The City of Bowie is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

16. At all times relevant to this Order, Respondent has owned and/or operated a MS4 as that term is defined in 40 C.F.R. § 122.26(b)(8).

17. Respondent’s MS4 is located within the City of Bowie, Maryland (the Bowie MS4), which is an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, and requires an NPDES permit to discharge storm water pursuant to 40 C.F.R. § 122.32(a)(1).

18. The City of Bowie encompasses a total area of approximately 18.51 square miles. According to the 2010 Census, its population is estimated at 57,727 people.

19. The Bowie MS4 is a “small MS4” within the meaning of 40 C.F.R. § 122.26(b)(16).

20. Respondent’s MS4 discharges stormwater to the Patuxent River, which runs to the Chesapeake Bay. The Patuxent River and Chesapeake Bay are “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

21. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the MDE to issue NPDES permits on September 5, 1974, and to issue general NPDES permits in 1991.

22. MDE issued NPDES "General Permit for Discharges from Small Municipal Separate Storm Sewer Systems," General Discharge Permit No. 03-IM-5500; General NPDES Permit No. MDR 055500 (hereinafter, "the MS4 General Permit"), effective April 14, 2003.

23. The MS4 Permit was scheduled by its terms to expire on April 14, 2008 but has been administratively extended by MDE.

24. In order to be eligible for general permit coverage, a regulated MS4 had to submit a Notice of Intent (NOI) to MDE.

25. The City of Bowie submitted a NOI to MDE and obtained coverage under the MS4 General Permit on June 23, 2003.

26. On June 9 and 10, 2015, duly-authorized EPA representatives and their contractors conducted an inspection of Respondent's MS4 program ("the 2015 MS4 Inspection").

27. On October 1, 2015, EPA prepared a final Clean Water Act Compliance Inspection Report for the City of Bowie, Maryland (EPA's Inspection Report).

28. Bowie received a copy of EPA's Inspection Report. Bowie submitted its response to EPA's Inspection Report to EPA on October 23, 2015.

29. Based upon the 2015 MS4 Inspection, EPA representatives identified the following alleged violations of the MS4 General Permit and the CWA as described below.

Count 1: Failure to Submit Annual Stormwater Program Reports

30. Part V.C. of the MS4 General Permit ((Monitoring, Recordkeeping, Reporting And Program Review: Reporting) requires the permittee to submit an annual report to MDE which shall include, among other information, the permittee's compliance status with all permit conditions, an assessment of the appropriateness of the permittee's identified best management practices (BMPs), results of all collected stormwater information during the reporting period, and a summary of all the planned stormwater activities planned during the next annual reporting period.

31. At the time of the 2015 MS4 Inspection, Respondent had failed to submit any of the required annual stormwater program reports since 2004. Respondent represents that MDE excused annual reports for 2009 and 2010 based on expected MS4 permit reissuance.

32. EPA alleges that Respondent's failure to submit any of the required annual stormwater program reports in 2006 through 2008 and 2011 through 2015 is a violation of the MS4 General Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 2: Failure to Develop and Implement All Required Procedures for the Detection of Illicit Discharges

33. Part III. C. of the MS4 General Permit (Minimum Control Measures: Illicit Discharge Detection and Elimination) requires the permittee to develop, implement and maintain a program to identify and eliminate illicit storm drain system connections and non-stormwater discharges into the MS4. At a minimum, such a program shall include procedures to field screen storm drain outfalls on a consistent basis, inspection procedures for identifying the source of any suspected illicit discharges to the storm drain system, and enforcement and penalty procedures.

34. At the time of the 2015 MS4 Inspection, Bowie had not implemented and maintained all of the required procedures for illicit discharge detection and elimination. Bowie representatives stated that they performed annual inspections of stormwater ponds and performed inspections of all outfalls leading to streams every three years. Bowie represents that it had performed all the required inspections. However, Bowie did not have documentation of the triannual inspections of the outfalls, nor did it have written procedures concerning what actions were taken if the outfall inspections identified any illicit discharges. In addition, at the time of the 2015 MS4 inspection, EPA found that Bowie's map of all MS4 outfalls did not distinguish between City outfalls (which represented those outfalls included within the MS4) and privately owned outfalls, which would not be included as part of the City's MS4. The MS4 General Permit did not explicitly require written procedures nor did it explicitly require the MS4 map to distinguish between City-owned and privately-owned outfalls.

35. EPA alleges that Respondent's failure to have written procedures concerning the action to be taken if illicit discharges are identified and to maintain a map that distinguishes between City-owned and privately-owned outfalls constituted a failure to implement and maintain an illicit discharge detection and elimination program with all the required components and is a violation of the MS4 General Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 3: Failure to Comply with All Pollution Prevention and Good Housekeeping Measures at All Municipal Operations

36. Part III.F. of the MS4 General Permit (Minimum Control Measures: Pollution Prevention and Good Housekeeping) requires the permittee to implement and maintain pollution prevention and good housekeeping techniques and procedures to reduce pollutants from all municipal operations. Components of this minimum control measure shall include municipal employee training materials to prevent and reduce pollutant discharges to the storm drain system, runoff controls geared toward fleet yard and building maintenance activities, and ensuring all municipally owned activities are properly permitted under NPDES or any other State or federal water pollution control program.

37. At the time of the 2015 MS4 Inspection, Bowie failed to have documentation of its techniques and procedures to reduce pollutants from municipal operations, and failed to have

documentation of its employee training for pollution prevention and good housekeeping measures at municipal operations.

38. At the time of the 2015 MS4 Inspection, the EPA inspectors found that the two municipal facilities visited by EPA, the Public Works Facility and the Parks Maintenance Facility, were not permitted under Maryland's General Permit for Stormwater Discharges Associated with Industrial Activity (General Discharge Permit No. 12-SW). Both of these municipal facilities were being used for vehicle and equipment staging and maintenance as well as for storage and stockpiling of various materials.

39. At the time of the 2015 MS4 Inspection, EPA's inspectors observed violations of pollution prevention and good housekeeping measures at the two municipal facilities visited by EPA. At the Parks Maintenance Facility, the inspectors observed accumulated sediment near the opening of the curb outlet on the western side of the property as well as near curb cutout inlets for the bioretention facilities on the eastern side of the property, stormwater pooled at the outfall of the two bioretention facilities (with the outfall needing maintenance based on the fact that it was not draining properly), and that the facility's stormwater treatment devices were in need of maintenance. At the Public Works Facility, the inspectors observed a large amount of petroleum staining at the staging area behind the Streets Division storage bays, (which was being used for storing vehicles and equipment), pooled water at the entrance to the street sweeping barn, migrated road sand beyond the cover of the storage barn, an unlabeled and uncovered bucket under one of the valves connected to a de-icing chemical tank, a catch basin on the south side of the facility which was clogged and in need of maintenance, and trash and debris in and around the stormwater management pond on the south side of the solid waste area.

40. EPA alleges that Respondent's failure to document its pollution prevention and employee training procedures and failure to maintain at all times pollution prevention and good housekeeping measures at its municipal operations is a violation of the MS4 General Permit and Section 301 of the Act, 33 U.S.C. § 1311.

III. GENERAL PROVISIONS

41. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.

42. Respondent neither admits nor denies the Allegations of Fact set forth in this CAFO.

43. Respondent waives any defenses it might have as to jurisdiction and venue, its right to contest the allegations through hearing or otherwise; and its right to appeal the proposed final order accompanying the Consent Agreement.

44. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

45. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter and consents to issuance of this CAFO without adjudication.

46. Respondent shall bear its own costs and attorney fees.

47. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

48. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

IV. CIVIL PENALTY

49. In full and final settlement of the Complainant's claims for civil penalties for the alleged violations identified herein, Respondent consents to the assessment of, and agrees to pay, in accordance with the terms set forth herein, the total administrative civil penalty of twenty-seven thousand five hundred dollars (\$27,500) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c).

50. The civil penalty amount set forth in Paragraph 49, above, is based on a number of factors, including the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g).

51. Respondent shall pay the civil penalty amount described in Paragraph 49, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 51 through 55, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action;
- b. All checks shall be made payable to "United States Treasury";
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026
Remittance Express (REX): (866) 234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

Enter **sfo 1.1** in the search field. Open and complete the form.

i. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Bonnie Pugh
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

52. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

53. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

54. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

55. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

56. The penalty specified in Paragraph 49 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

V. APPLICABLE LAWS

57. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

VI. RESERVATION OF RIGHTS

58. This CAFO resolves only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present and imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all

limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

59. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO, if EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, EPA may have under law or equity in such event.

VII. FULL AND FINAL SATISFACTION

60. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in this CAFO. Compliance with the requirements and provisions of this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and/or regulations administered by EPA.

VIII. PARTIES BOUND

61. This CAFO shall apply to and be binding upon the EPA, Respondent and Respondent's officers, employees, agents, successors and assigns. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

IX. EFFECTIVE DATE

62. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective thirty (30) days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5), or after a public notice and comment process pursuant to 40 C.F.R. § 22.45(b) and (c) is concluded.

X. ENTIRE AGREEMENT

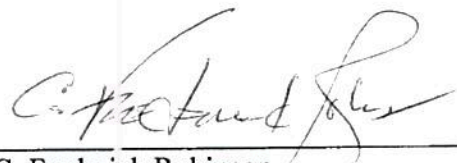
63. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

XI. FINAL ORDER

FOR RESPONDENT,

CITY OF BOWIE:

Date: 1/4/2017



G. Frederick Robinson

Mayor, City of Bowie

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

This 6th day of March, 2017

Date: 3-6-17


Dominique Lueckenhoff, Acting Director
Water Protection Division